



OFFICE OF THE
BOARD OF APPEALS
TOWN OF DUNSTABLE
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Accepted
February 27, 2014

McClory Hearing Minutes
December 19, 2013

Members Present: Leo Tometich, Chairperson
John Martin, Clerk
Lisa O'Connell, Member
Gerald Mead, Associate Member
Ruth Lowder, Secretary and Associate Member

Petitioners Present: Scott McClory, 54 Manning Road, Chelmsford, MA 01824
Kellie McClory, 54 Manning Road, Chelmsford, MA 01824
Christine E. Morrissey, Esq., Representation

Abutters Present: John and Tina Livingston, 3 Lower Dam Way
Michael Bell, 16 Lake Circle
Brian Locapo, 59 Lower Dam Way

Others Present: David DeBay, 3 Linwood Lane, Dunstable
Jim Tully, 147 Depot Street, Dunstable
Peter Palakavong, 26 Massapoag Way, Dunstable
Ken Leva, 67 Sky Top Lane, Dunstable
Brian Rich, 874 Main Street, Dunstable

Chairperson Leo Tometich called the meeting to order, read the posted hearing notice for the record and introduced the board members.

John Martin motioned to open the hearing. Lisa O'Connell seconded and the hearing was opened at 7:07 pm.

Leo Tometich announced that in the interest of disclosure, the Zoning Board Clerk, John Martin is an abutter.

Christine Morrissey stated she is representing Scott and Kellie McClory, who were present, along with David DeBay of Cornerstone Land Consultants of Pepperell, MA who completed the surveying and the plot plan dated October 9, 2013. At the time the application was completed, the McClorys were under contract to purchase the property. As of October 25, 2013 they are now the owners of 10 Lake Circle. She presented a copy of the deed to the board.

David DeBay said the property is located on Lake Street where it forks with Lower Dam Way. The land was developed in 1926. In the 1980's the parcel was divided for the placement of 2 homes. What sits on 10 Lake Circle now is a 2 bedroom home on a partial foundation with some additions.

The side lot line setbacks are currently 3' 6" on the left and 11' 9" on the right. After the reconstruction, the new side lot line setbacks would be 4' 8" on the left and 18' 7" on the right. It is basically the same footprint.

The Conservation Commission has been notified because they are building within the 100' requirement. The Board of Health is involved as the septic will need an upgrade; however it is presently Title 5 certified.

They are proposing a 2-bedroom home.

Leo Tometich asked if the canvas covered structures would remain.

Mr. DeBay said they would be removed. The structures and foundations would all be removed.

Christine Morrissey said because it is a pre-existing non-conforming structure, they are seeking a finding that the reconstruction would not be more detrimental to the neighborhood. The structure that is there presently is very low to the ground and in bad repair and the previous owner advised them to tear it down. A finding in their favor is obviously a benefit to the neighborhood.

The Building Inspector said they would also need a variance.

The current structure is not functional for today's needs. The 2 bedroom 2-story structure would include a garage and living room. It is a modest plan, instead of a structure that is functionally obsolete.

David DeBay said the height of the proposed structure would be below the restriction of 35 feet. The abutter's house to the right sits forward, and the larger house to the left sits back further than where the structure is proposed.

John Martin asked what the height of the structure would be.

David DeBay said that it would be a 2-story. 8-10 feet per story with an attic.

Leo Tometich asked where the garage would be located.

Scott McClory said it would be part of the first floor in the back of what is also known as the street side of the structure.

John Martin asked if it would have a driveway.

Mr. McClory said, yes from the street to the garage.

Leo Tometich asked about the septic.

Scott McClory said it has a tank, pump chamber and a field.

Mr. DeBay said the tank location will be more in compliance even though it passed Title 5.

Tina Livingston asked if the new structure would affect the septic.

John Livingston asked if the utility pole would be affected.

Mr. DeBay said the utility pole would be moved.

Tina Livingston said that a fire truck would never be able to get down there to turn around.

John Martin said it can't get down there now.

Tina Livingston asked where the stakes were to mark the boundary lines near the fence.

Scott McClory said there are presently no stakes marking the boundary lines.

David DeBay said the fence is close to the boundary line.

Tina Livingston said that they would be required to mark the boundary line.

David DeBay said it would be done at a later date when the detailed site plan was developed.

Tina Livingston stated that part of the new structure would be more non-conforming on one side. She asked if the home was habitable.

Leo Tometich said not to his knowledge.

Gerald Mead said that whether or not the house is habitable is not relevant. He said they petitioners are making the house a rectangle in order to increase most of the setbacks. The question is whether the plan is more detrimental to the neighborhood. Input from the abutters is important to decide this.

John Livingston asked how it is a financial burden to remodel what is there now.

Christine Morrissey said that it would cost more to remodel. It's not really a 2 story because of the pitch of the land.

Michael Bell stated that the green area outlined in the plan of the left rear of the building is actually more non-conforming and more detrimental.

John Martin said he understood how the abutter would be concerned about the increase of the size of the structure on the back side. He asked if the structure could be moved over a couple of feet.

David DeBay said they could, but they would increase the Board of Health non-compliance issue.

John Livingston asked why they couldn't center the structure on the property.

David DeBay reasserted that it was decreasing the distance from the structure to the septic. The new plan would make this issue in compliance.

Leo Tometich said he would possibly like to consult with Town Counsel. He asked the size of the structure.

Mr. DeBay said it is 24' x 38' and includes the deck and garage.

John Martin asked what would happen to the concrete patio.

Scott McClory said it would be removed.

John Martin asked if the trees around the slab would be removed.

Mr. DeBay said yes, the shrubs would be removed.

Leo Tometich asked for further comments from those present.

Peter Palakavong said he personally has no problem or objection to the plan. He said the previous owner used to block part of the road. It was never a big deal, but it did become a problem. There were trash bins and other objects over the edge of the road and inadvertently moved the road over to make his property bigger. It did have an adverse impact to the neighborhood.

Christine Morrissey said they would entertain a condition in the decision about not blocking the roadway.

Peter Palakavong said he would like to see the road free for travel.

John Martin agreed that the previous owner slowly moved the road about 10 to 15 feet over.

Lisa O'Connell said that the location of the road was not relevant to the petition before them and it would have to be handled between the abutters.

Tina Livingston said she was a direct abutter. She asked if the building is condemned.

Christine Morrissey said no.

Lisa O'Connell said that she would like the board to consult with Town Counsel as to what makes a structure more non-conforming. Is it the overall square footage of the structure, consideration of all of the setbacks or a percentage of the increase or decrease in the setbacks? If the proposed structure is more non-conforming, then it wouldn't matter if it was or was not more detrimental to the neighborhood.

Leo Tometich said he would entertain a motion to continue the hearing.

Lisa O'Connell motioned to continue the hearing to Thursday, January 9, 2014 at 7:00 pm in the town hall.

John Martin seconded the motion and all members were in favor.

The hearing was continued at 7:45 pm.